

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Christopher Faulkner,

Appellant,

v.

Case No. 2015-SUS-06-0074

Clark County Combined Health District,

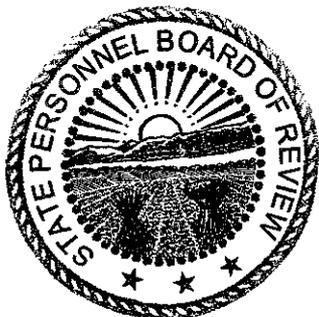
Appellee,

ORDER

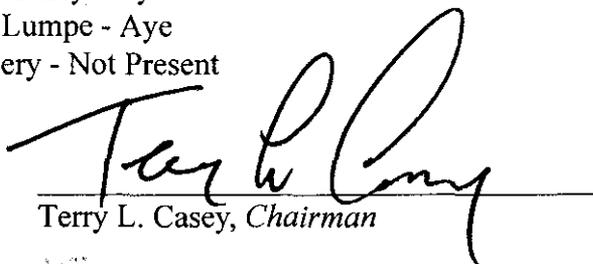
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that Appellant's instant five-day suspension is **AFFIRMED**, pursuant to R.C. 124.03 and R.C. 124.34.



Casey - Aye
Lumpe - Aye
Tillery - Not Present


Terry L. Casey, *Chairman*

CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes ~~(the original)~~ a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, October 30, 2015.


Clerk

NOTE: Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.

NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD. Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

METHOD OF PAYMENT: for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system (OBM Form 7205), which must be processed prior to the filing of an appeal. To initiate an ISTV, State agencies may call the State Personnel Board of Review Fiscal Office at 614/466-7046.

IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE November 6, 2015. You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then **YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.**

If you have any questions regarding this notice, please contact the Board at 614/466-7046.

Case Number: 2015-SUS-06-0074

Transcript Costs: \$118.50 Administrative Costs: \$25.00

Total Deposit Required: * \$143.50

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: November 16, 2015

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Christopher Faulkner

Case No. 2015-SUS-06-0074

Appellant

v.

September 25, 2015

Clark County Combined Health District

Appellee

James R. Sprague
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This case came to be heard on September 22, 2015. Present at the hearing was Appellant, who appeared *pro se*. Appellee, Clark County Combined Health District (CCCHD), was present through its designee, Clark County Health Commissioner Charles Patterson, and was represented by Andrew P. Pickering, Assistant Prosecuting Attorney.

This cause comes on due to Appellant's June 1, 2015 timely filing of an appeal from a five-day suspension from his FLSA-overtime eligible position of Registered Sanitarian. Appellant's pertinent R.C. 124.34 Order was signed, served, and effective on May 22, 2015.

Jurisdiction over the subject matter of this appeal was established pursuant to R.C. 124.03 and R.C. 124.34.

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

The pertinent language in Appellant's instant R.C. 124.34 Order of Suspension specifically alleges that Appellant performed:

Careless, defective and inefficient work for incidents on April 30, 2015, and May 5, 2015 involving failure to follow the CCCHD Real Estate Inspection Procedure and on May 13, 2015 involving the refrigeration of a water sample following the collection of the same.

The Board of Health resolved that you be suspended without pay for five working days beginning May 22, 2015. Additionally, the Board has required a minimum of five (5) mandatory counseling sessions with the Employee Assistance Program.

Additional specific incident information and background is attached to this order. (emphasis added)

At hearing, three witnesses testified.

First to testify was **Richard Miller**, the Sanitarian Supervisor for the CCCHD. Mr. Miller serves as Appellant's immediate supervisor.

Next to testify was **Charles Patterson**, Clark County Health Commissioner. Mr. Patterson serves as the Chief Executive Officer on behalf of the Clark County Board of Health. He also served as Appellee's designee at hearing.

Last to testify was **Larry Shaffer**, the Director of Environmental Health for the CCCHD. Mr. Shaffer serves as Richard Miller's immediate supervisor.

CCCHD Sanitarian Supervisor Richard Miller began his testimony by noting that he oversees the CCCHD's Sanitarian staff, which includes Staff Sanitarians and Sanitarians-in-Training. As a consequence of this supervision, Mr. Miller has supervised Appellant since Appellant began his service with the CCCHD a little more than two years ago.

Mr. Miller averred that Appellee's Real Estate Inspection Policy covers inspection procedures and protocols for both residential sewage treatment systems (including septic tanks) and private water systems (including wells). He stated that a homeowner, or more often a lender, requests, on a fee basis, that an inspection be done.

These inspections are done to ensure compliance with Ohio Administrative Code provisions that are in place to maximize the continued hygienic operation of these two systems. These inspections are also done to allow property owners to address sewage and drinking water hygiene issues that might otherwise stand in the way of successful real estate transfers.

Mr. Miller identified Appellee's Exhibit G as the CCCHD Division of Environmental Health Real Estate Inspection Program Procedure (as revised December 6, 2011). This procedure governs the manner in which Mr. Miller, Appellant, and other CCCHD Registered Sanitarians perform inspections. At hearing, Mr. Miller principally focused on the "water side" of the operation, since that is the part of the policy that Appellee alleges Appellant violated.

Mr. Miller provided a detailed account of the procedure an inspector is to utilize to ensure compliance with the pertinent Ohio Administrative Code and

CCCHD policy requirements in this area. He explained that the ‘casing’ is the part of the well pipe connecting above ground to the well/ground water that holds back sediment and that the ‘cap’ is the top fitting that goes over the casing.

Modern requirements include, but are not limited to, maintaining a required distance between a water treatment system component and a sewage disposal/treatment system component. Further, if a casing for the well does not extend at least eight inches above grade, the well water is to be tested using a specified procedure. This procedure includes using a special container for the water sample, placing the container in ice packs to transport back to the CCCHD office, placing the packet in a specially designated refrigerator upon returning to the office, and having the lab pick up the refrigerated sample the next morning for testing and analysis.

If the sample comes back as unsafe, the property owner is to be notified so that the owner can fix/revise the casing; the casing must be at least 12 inches above grade for purification/re-testing of the well.

Regarding Appellant’s inspection training, Mr. Miller testified that Appellant first received a copy of the inspection procedure and then accompanied and observed Mr. Miller on a number of inspections. Mr. Miller declared that Appellant next accompanied and observed the CCCHD’s other Sanitarian when that Sanitarian performed inspections. Finally, Mr. Miller stated he observed Appellant while Appellant performed several inspections.

The pertinent R.C. 124.34 Order of Suspension in this matter refers to three incidents. They involve inspections at 938 Bowman Road, 5100 North River Road, and 2080 Windy Ridge Drive.

The record reflects that on the April 29, 2015 Bowman Road inspection, Appellant failed to initially advise a homeowner, who had a well that terminated only one inch above grade, that the water sample from that well had tested as unsafe and that the owner was to alter the well. This error was caught by Environmental Secretary Rita Lewis, who apprised Appellant. On May 5, 2015, Appellant sent an e mail to the pertinent realtor to correct the error and to notify the realtor that the well had to be modified.

The record further reflects that on the April 27, 2015 North River Road inspection (of a well terminating two inches above grade), Appellant took a sample that was determined to contain unsafe drinking water. On April 30, 2015, Appellant advised the requesting party to chlorinate the well and to replace the well cap. Appellant took a second sample on May 6, 2015 and that sample came back as unsafe on May 8, 2015.

Because Appellant was not available on that same afternoon, Mr. Miller was given the file to notify the requesting party. However, Mr. Miller noticed that the requesting party should have been advised to alter the well and to chlorinate *after the first test came back as unsafe*, and *before* the inspector requested an additional sample.

The record also reflects that on the May 14, 2015 Windy Ridge Drive inspection and sampling, Appellant failed to place the water sample in the designated CCCHD refrigerator (or in any other refrigerator), allowing the sample to become un-testable. As a result, the CCCHD was required to make arrangements for Mr. Miller to return in the evening to re-test and to make arrangements to have a special Friday lab pickup, with the CCCHD having to pay the extra gas fee the lab assessed for this service.

On cross, Mr. Miller noted that individual techniques can vary among inspectors. Yet, he also noted that the inspector must still document procedures that are utilized and follow the procedures required by CCCHD policy and by pertinent Ohio Administrative Code provisions. Mr. Miller also indicated that he did not know what intent might have been behind Appellant's actions.

Next to testify was Health Commissioner Charles Patterson. Mr. Patterson offered that there have been occasions when CCCHD inspectors failed to follow mandatory policies and procedures. Some of these failures led to the suspension of real estate transfers until the Board of Health, itself, undertook expensive remediation measures. These measures even included installing a new septic tank or putting in a new well, costing taxpayers thousands of dollars.

Commissioner Patterson did offer that Appellant's representative at Appellant's pre-disciplinary conference, Sanitarian 3 Anne Kaup-Fett, stated that Appellant was under pressure because Appellant's supervisor was watching Appellant for compliance. Mr. Patterson further noted that Sanitarian Kaup-Fett also offered that Appellant has a childhood diagnosis of Attention Deficit Disorder (ADD). Mr. Patterson averred that Ms. Kaup-Fett's statement at the pre-disciplinary conference was the first Appellee had heard of Appellant's diagnosis and that Mr. Patterson knew of no accommodation that Appellant had requested.

On cross, Commissioner Patterson agreed with Appellant that the CCCHD Real Estate Inspection Program Policy (Appellee's Exhibit G) does not contain express time guidelines in which the inspectors are required to do their jobs and agreed that Appellant did not violate any time frames from the policy. Yet, he indicated, Appellant did violate the policy based on Appellant's other identified actions.

Mr. Patterson indicated that the CCCHD required Appellant to attend a minimum of five EAP counseling sessions; as a result of the specific statement made by Appellant's pre-disciplinary representative that pressure at work was adversely affecting Appellant's ability to accurately perform Appellant's job duties. The record reflects that, as of the date of hearing, Appellant had completed this EAP counseling requirement. It also appears that, at hearing, Appellee learned that Appellant may have also been previously diagnosed with and/or treated for Attention Deficit Hyperactivity Disorder (ADHD) and Generalized Anxiety Disorder (GAD).

Mr. Patterson further opined that the CCCHD strives for its employees to be successful and accurate. Thus, he offered, the EAP requirement was put in place to allow Appellant to continue to work at the CCCHD and to successfully address an issue that may have been keeping Appellant from performing his duties.

Based on the testimony presented and evidence admitted at hearing, I make the following Findings:

First, I incorporate, herein, any finding set forth above, whether express or implied.

Next, I find that Appellant received sufficient training to be able to successfully conduct private water treatment system inspections on behalf of the CCCHD.

Further, I find that Appellant failed to successfully complete assignments in this regard as set forth, above. This failure required Appellee to expend extra staff time and money to fulfill the requirements of these inspections.

Appellant's apparent diagnosed conditions of ADD, ADHD, and GAD may have contributed to his inattention to certain details regarding the inspection procedure.

CONCLUSIONS OF LAW

This case presents this Board with the question of whether Appellant's failure to follow Appellee's water treatment inspection policy and procedure in three instances merits a five-day suspension? Based on the findings set forth, above, and for the reasons set forth, below, this Board should answer affirmatively and, so, should affirm Appellant's instant suspension.

R.C. 124.34 contains "inefficiency" as a disciplinable offense. In Appellant's instant R.C. 124.34 Order of Suspension, Appellee cites "... inefficient work ..." as one of the three bases for suspending Appellant.

I have found, above, that Appellant's failure to comply with policy on three different occasions led to an expenditure of staff time and money that should not have been needed in order to fulfill the inspection requirements for the three properties that Appellant inspected. These unnecessary expenditures represent classic examples of "inefficiency".

Yet, perhaps a positive outcome has arisen in this matter. Both Appellee and Appellant have apparently become aware that Appellant may have several conditions which may affect his ability to perform his job duties. Accordingly, going forward, it is hoped that Appellant and Appellee can work cooperatively to maximize Appellant's opportunity to be successful in conducting inspections that are in full accord with Appellee's procedures and with its expectations.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** Appellant's instant five-day suspension, pursuant to R.C. 124.03 and R.C. 124.34.

James R. Sprague
Administrative Law Judge